

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-125669-08

Date:

October 07, 2008

LEGEND

Parent =

Sub 1 =

Sub 2 =

State A =

Year 1 =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Parent Official =

Tax Professional =

Dear :

This letter responds to a letter dated June 4, 2008, submitted on behalf of Parent, requesting a determination under § 1.1502-75(h)(2) that Sub 1 and Sub 2 each had filed a properly executed Form 1122 with the consolidated Federal income tax return of the Parent Group for the Year 1 taxable year. Additional information was received in subsequent correspondence. The material information is summarized below.

Parent, a corporation incorporated on Date A under the laws of State A, uses a calendar year and the accrual method. For years prior to Year 1, Parent owned no subsidiaries (pursuant to the stock ownership requirements of § 1504(a)(2)) and filed corporate Federal income tax returns as a stand-alone entity. During Year 1, Parent acquired all the stock in two domestic subsidiaries, Sub 1 and Sub 2. Parent together with Sub 1 and Sub 2 (the "Parent Group") filed a consolidated Federal income tax return by the Year 1 due date; however, inadvertently, Sub 1 and Sub 2 failed to file properly executed Forms 1122. In addition, inadvertently, Parent filed two short year returns for Year 1; one that included Parent as a stand-alone company until Date C and one that included Parent, Sub 1 and Sub 2 as a consolidated group from Date E to Date F.

On Date D, Parent sold all the stock in Sub 1 to an unrelated entity. Thus, Sub 1 has ceased to be a member of the Parent Group.

Information, affidavits, and representations submitted by Parent, Parent Official, and Tax Professional explain the circumstances that resulted in these Year 1 inadvertent errors.

REPRESENTATIONS

(a) For Year 1 and all subsequent years, the members of the Parent Group have reported (and will continue to report) all of their income and deductions in the Parent Group on a timely filed consolidated Federal income tax return for the Parent Group.

(b) Parent's two short year returns for Year 1, in total, included the proper amount of income and deductions for the Parent Group for the entire Year 1 taxable year. Had Parent Group's consolidated Federal income tax return been properly filed for its Year 1 taxable year, no change in Federal income tax liability would have occurred (or will occur) in any Parent Group consolidated return year relative to the liability stated in the Federal income tax returns actually filed.

(c) Except for the failure to file properly executed Forms 1122 with the Parent Group's Year 1 consolidated Federal income tax return, the Parent Group's members were eligible to file a consolidated Federal income tax return for the Year 1 taxable year.

(d) Neither Sub 1 nor Sub 2 filed a separate Federal income tax return for Year 1 or any subsequent year (except for any filing by Sub 1 with regard to periods after it ceased to be a member of the Parent Group).

(e) For Year 1 and all subsequent years, all of the members of the Parent Group were included (and for future filings will be included) on the affiliations schedule, Form 851, attached to the consolidated Federal income tax returns filed by the Parent Group.

(f) As of the date the request for this ruling letter was submitted to this office, the Internal Revenue Service had not contacted any member of Parent Group concerning the failure to timely file executed Forms 1122 for Year 1 or any subsequent year.

APPLICABLE LAW

Section 1.1502-75(a)(1) provides that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502, in accordance with § 1.1502-75(b)(1). If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Section 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns pursuant to § 1.1502-75(c).

With regard to the consent of a corporation for a group's first consolidated year, § 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year

and that a corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. This regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nonetheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner, under the facts and circumstances, determines that the member has joined in the making of the consolidated return, such member will be treated for purposes of § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year. Section 1.1502-75(b)(2).

RULING

Based solely on the information submitted and the representations made, we rule as follows:

Parent and Sub 1 and Sub 2 are treated under § 1.1502-75(h)(2) as if Sub 1 and Sub 2 each had filed a properly executed Form 1122 with the consolidated Federal income tax return of the Parent Group for the Year 1 taxable year. Section 1.1502-75(b)(2) and (h).

CAVEAT

We express no opinion as to whether, in fact, Parent and its subsidiaries qualify substantively to file a consolidated return. Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this ruling letter.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-125669-08) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

Debra L. Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: